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No. 04-222

IN THE

SUPREME COURT OF THE UNITED STATES

DASSAULT AVIATION,

Petitioner,

v.

BEVERLY ANDERSON,

Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

RESPONSE IN OPPOSITION TO MOTION OF THE ORGANIZATION FOR INTERNATIONAL INVESTMENT AND THE CHAMBER OF COMMERCE OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND RESPONSE TO BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER

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RESPONSE IN OPPOSITION TO MOTION OF THE ORGANIZATION FOR INTERNATIONAL INVESTMENT AND THE CHAMBER OF COMMERCE OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND RESPONSE TO BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER

Respondent, Beverly Anderson, submits this opposition to the Motion filed on behalf of the Organization for International Investment and the Chamber of Commerce of the United States ("the Chamber") for Leave to File a Brief as *Amici Curiae* on behalf of the Petitioner, Dassault Aviation. Respondent's consent to the present petition was withheld for multiple reasons. First, there is no legitimate interest in protecting an international manufacturer from having to defend its product in a United States courtroom in a state at which the manufacturer has purposefully directed its activities and products, where it has admitted its "presence" is "especially significant," and where its Group's largest production and distribution center is located. Second, the *Amici Curiae* brief does nothing more than to echo the argument of the Petitioner and to regurgitate what has already been averred by Dassault Aviation in its Petition for a Writ of Certiorari. Finally, the Petitioner's *Amici* fail to provide any factual underpinning to their conclusory statement that "confusion" exists in and among the circuits to justify the granting of Dassault's Petition. For these reasons, leave to file an *amicus* brief on behalf of the Petitioner should be denied.

A. The Petitioner's *Amici* Misrepresent the Holding of the Eighth Circuit to Mean that the Negligence of a Subsidiary Imputes to the Parent.

In their effort to overstate the importance of this case, these prospective *Amici* have stated:

> [The Eighth Circuit's approach] deliberately disregards the "general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation...is not liable for the acts of its subsidiaries." [*citing United States v. Bestfoods*, 524 U.S., 51, 61, 118 S.Ct. 1876, 1884 (1998)]. It also ignores the "equally fundamental principle of corporate law," that a subsidiary's corporate veil may be pierced only "when, inter alia, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's behalf." *Id.*, at 62.

Amici Brief, page 8.

This is totally false. At no point did the Eighth Circuit ever hold that a parent could be held vicariously liable for the negligence of its subsidiary. In fact, at no point in this lawsuit has Respondent ever made the allegation that Dassault Aviation is vicariously liable for any act or omission committed solely by its American agent. Petitioner's *Amici* are suggesting that the same "fundamental principles of corporate law" that govern vicarious liability likewise govern the "minimum contacts" analysis derived from *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945), and its progeny. They do not.

Petitioner's *Amici* cite this Court to its opinion in *Bestfoods, supra,* for the "fundamental principle of corporate law" set forth above. Reliance upon that case is misplaced because it did not involve a jurisdictional analysis, only a question of vicarious liability. In *Bestfoods*, the United States brought an action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) against, *inter alia*, a corporation that was parent to an oil company for reimbursement of costs associated with cleaning up industrial waste generated by a chemical plant. The issue in that case was whether, under CERCLA, a parent corporation was "operating" a facility, and hence, liable within the meaning of 42 U.S.C.§ 9601 *et seq*. Vicarious liability is <u>not</u> an issue in the appeal *sub judice*.

Rather, the issue before the Eighth Circuit below was whether Dassault had sufficient "minimum contacts" with the State of Arkansas such that the maintenance of the suit would not offend traditional notions of fair play and substantial justice. *International Shoe, supra,* 326 U.S. at 316, *quoting Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343 (1940). The "corporate separateness" between Dassault and its American agent is of no import to this issue. The fact that

Dassault was purposefully directing its activities to the forum state through the delivery of an unfinished business jet to its Group's largest American facility makes the Petitioner amenable to suit in Arkansas for actions that arise out of, or relate to, that contact. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462 (1985) This is settled law, and the notion being advanced by the Petitioner's *Amici* that the Eighth Circuit has violated "fundamental principles of corporate law" is both misleading and fiction, especially when this Court has steadfastly maintained that a foreign manufacturer that is not physically present in the forum state can still be subject to jurisdiction there. Even under the strictest holdings of this Court, it has long been established that a defendant that "purposefully directs" its activities and products toward a forum state must anticipate that it could fairly be called upon to defend its products in that forum. *See, e.g. Burger King, supra,* 471 U.S. at 476-477. This is not new, and in no way alters the "fundamental principles of corporate law" as *Amici* would suggest.

B. The Proposed *Amici* Brief Merely Parrots and Expounds Upon the Argument Which Has Already Been Presented by Petitioner.

The *Amici* of Petitioner do nothing more than to make the same argument that Petitioner has previously made to this Court, only with the added, unsubstantiated claim that the instant cause has a great impact on the state of international commerce. The Motion for Leave to file an *Amicus* Brief should be denied for this reason alone. The Petitioner's *Amici* overstate the importance of this case in much the same way as the Petitioner itself. The Eighth Circuit's opinion below followed the proper standards enunciated by this Court in *International Shoe* and refined in *Burger King* and *Asahi Metal Indus. Co. v. Superior Court,* 480 U.S. 102 (1987). Dassault should not be permitted to avail itself of the benefit of doing business in the State of Arkansas and not be amenable to suit there. No confusion whatsoever emanates from the holding of the Eighth Circuit below.

There is no factual underpinning to the *Amici*'s contention that "confusion" emanates from the Eighth Circuit's ruling below, for reasons which have already been stated in the original brief in opposition to the Petition for a Writ of Certiorari and which will not be repeated here. The Eighth Circuit followed the non-talismaic formula set forth in *International Shoe, Burger King,* and *Asahi* in finding that the "minimum contacts" existed prior to considering "other factors." The *Amici* Petition, like Dassault's Petition, operates under the false assumption that the Eighth Circuit ruled that jurisdiction over Dassault existed by virtue of the mere ownership of its subsidiary. This is inaccurate. The Eighth Circuit found that Dassault, through its own actions and established plan of distribution, had sufficient contacts with the State of Arkansas to warrant the exercise of jurisdiction. *Anderson v. Dassault Aviation,* 361 F.3d 449, 454 (8th Cir. Ark. 2004) ("Dassault Aviation's nexus with Arkansas and the Little Rock completion center goes *well beyond* mere ownership of [a subsidiary's] stock.") (Emphasis added). This can come as no surprise to a manufacturer that has acknowledged that its "'presence' in the United States has been especially significant in the State of Arkansas." *Id.*, at 453.

C. The Eighth Circuit's Holding Does Not Amount to "Jurisdictional Overreaching" that "Interferes" with International Commerce Inasmuch as Dassault was Found to Have "Minimum Contacts" with the State of Arkansas.

In a further attempt to overstate the significance of the Eighth Circuit decision below, the *Amici* are contending that the decision "poses grave threats to the conduct of national and global commerce." They are certainly wrong to reach this conclusion, given the facts upon which they are relying to state it. Specifically, the statement is made upon the inaccurate premise that the Eighth Circuit found jurisdiction to be present "based solely on the forum contacts of [Dassault's] separately incorporated subsidiary[.]" *See Amici Brief,* pg. 7 Furthermore, the *Amici*'s claim is predicated

largely upon the misconception that the Eighth Circuit's opinion "carries serious implications for the operation of normal, run-of-the-mill parent-subsidiary relationships." *Id.*, at 8. A closer look at the opinion disavows any such notion. The Eighth Circuit made clear that the "nexus with Arkansas...goes well beyond mere" parent/subsidiary relationships. *Anderson*, at 454.

Amici's feigned histrionics are a misguided attempt to convince this Court that the scope of the Eighth Circuit's holding goes far beyond the specific facts of the present case, or that it somehow alters the rules relative to the conduct of international business. Much like Petitioner itself, the *Amici* (by taking isolated observations of panel below out of context) are attempting to mislead this Court into thinking that the Eighth Circuit decision can be read to support the proposition that ownership of a subsidiary doing business in the forum state, without more, is enough to justify the exercise of *in personam* jurisdiction over the parent. That is simply not so, and these *Amici* know better. The Eighth Circuit has repeatedly affirmed the rule of law that the activities of a subsidiary in a forum state alone are not sufficient to sustain personal jurisdiction over a parent corporation. *Anderson*, at 452, *citing Epps v. Stewart Information Services, Inc.*, 327 F.3d 642, 645-7 (8th Cir. 2003).

Petitioner's subsidiary is part of an elaborate distribution system that was created by Petitioner for the purpose of completing, distributing and marketing its products in the United States. Arkansas is the major hub for the Dassault Group's business operations in the United States, and the facility in Little Rock is touted by Dassault itself. The Eighth Circuit below noted that:

> The majority of jets sold worldwide by Dassault Aviation fly in and out of Arkansas to be completed to the specifications of customers at the Dassault Aviation Group's largest production site by Dassault Aviation's wholly owned subsidiary and exclusive distributor of business jets in the western hemisphere.

(Emphasis Added) *Anderson*, 361 F.3d at 453.

The Eighth Circuit rejected the idea that Dassault Aviation's established plan of distribution, including distributorship agreements with its subsidiary, was a "regular run-of-the-mill parent-subsidiary relationship," as these *Amici* phrase it. Dassault Falcon Jet is the American*agent* for the Petitioner, with whom the Petitioner collaborates to market and distribute aircraft throughout the United States, its largest market for custom-built business jets.

A manufacturer that has purposefully directed its activities toward the forum, and has acknowledged that its "presence" is "especially significant in the [forum] State of Arkansas," cannot be surprised, let alone "alarmed," under the established holdings of this Court, that personal jurisdiction would be found to exist, especially in a cause of action that arises out of and is related to those activities. That has been the holding the Eighth Circuit, nothing more. The holding is wholly in keeping with even the strictest of opinions by members of this Court, and does not alter the course or conduct of international trade. Therefore, the motion of *Amici*, as well as the petition itself, should be denied.

CONCLUSION

It is clear that the *Amici* are merely parroting what arguments Dassault has already set forth in its Petition for a Writ of Certiorari, many of which are not supported by the record or by the admissions of fact contained therein, and most of which misrepresent the breadth and holding of the Eighth Circuit's opinion below. Leave should not be granted to file an *Amicus* brief. For these reasons, the Motion for Leave to File an *Amicus Curiae* Brief in Support of the Petitioner's Argument should be denied.

Respectfully submitted,



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Respondent

CERTIFICATE OF SERVICE

I, Ted Boswell, a member of the Bar of this Court, certify that on this 28th day of October, 2004, I caused to be served by first-class mail, postage prepaid, a copy of the Response in Opposition to Motion of the Organization for International Investment and the Chamber of Commerce of the United States for Leave to File Brief as *Amici Curiae* and Response to Brief of *Amici Curiae* in Support of Petitioner in the above-captioned case on:

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I further certify that all parties required to be served have been served.

Ted Boswell